

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN GILBERT,

Plaintiff,

vs.

APC NATCHIQ, INC.

Defendants.

Case No. 3:03-CV-00174-RRB

DEPOSITION OF DOUGLAS L. SMITH
June 1, 2006

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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ALSO PRESENT:

MR. JOHN GILBERT

* * * *

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1 day on, three-day off schedule, and in my absence from
2 the Slope, they were the step-up for the department
3 and fill the roll of HSE manager in my absence.

4 Q Okay. So they were the coordinator of the other
5 specialists. These other specialists generally had --
6 I don't know if duty stations is the right word, but
7 generally had a routine set of work that they were
8 going to do, or expect to do, is that right?

9 A That's correct.

10 Q Okay. So a guy would have wash bay, or light duty
11 shop, or a pad or something to that effect?

12 A That's correct.

13 Q Okay. Would the safety supervisor do safety
14 specialist work routinely?

15 A Not routinely.

16 Q Okay. What safety specialist work would the safety
17 supervisor do?

18 A Probably the same as I would do, and that would be a
19 back-up for the field, if there be excess work,
20 someone off shift, in training, geographically not
21 available, because they're too far out to one site, so
22 we might respond to a scenario on their behalf.

23 Q Okay.

24 A And that would include myself as well.

25 Q Okay. So when a safety supervisor acted as the

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1 That's fair to say.

2 Q Okay. And policy and procedures would or ought to be
3 or hopefully were in there?

4 A Not totally encompassing. A lot of our job requires,
5 you know, thought and technical background to derive
6 answers, and not everything is written down for us.

7 Q What does the safety coordinator position of today do
8 differently than the safety specialist position of
9 yesterday?

10 MS. ZOBEL: Safety specialist or.....

11 MR. COVELL: I'm sorry. Thank you. Thank

12 you.

13 Q (By Mr. Covell) Safety supervisor position.

14 A They have more hands-on assignments. They are ask --
15 asked to actually be solely responsible for, for
16 example, all UA collections. We no longer use a third
17 party as we were at the time. They've got a lot more
18 duties that are routine, nonsupervisory, non-directing
19 role.

20 Q What directing actions did the safety supervisor do?

21 A It was within their scope of authority to redirect
22 resources. For example, if we had a job that day that
23 needed extra assistance from one of their specialists,
24 they would have the authority to ask for and redirect
25 people to assist and coordinate when we had the

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1 abnormal conditions.

2 Q Okay. But do you know if the safety supervisor ever
3 actually directed somebody to, say, get off that pad
4 and go to this one?

5 A Yes.

6 Q And who, what, when, where, why and how? Can you tell
7 me?

8 A No. I had, of course, my scope of activity and the
9 supervisor had their scope.

10 Q Right.

11 A So the only way for me to quantify how much directing
12 took place was to speak specialists that were employed
13 then, that are still employed now and gauge what their
14 perception was of the supervisor's positions and how
15 much direction they felt they received from that role.

16 Q Uh-huh.

17 A And that's how I derive my opinion that there was
18 quite a bit of directing or coordinating that went on
19 from that position, as I expected it to.

20 Q Okay. Well, let me.....

21 A And in my absence, it was the sole managerial position
22 left on the site.

23 Q Let me sort of work on the coordinating versus
24 directing issue here for a little bit. I mean, -- and
25 I'm asking for examples, I'm not suggesting this

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1 here today, you go here today and you go there today?

2 If you can say.

3 A It was certainly not a democracy. And in my position,
4 I looked to the supervisor to be the second in
5 command, and they had authoritative capability to
6 direct work and -- but in these embedded employees,
7 you need to understand what they're doing that day,
8 what their priorities are before you make a decision
9 who's best available to be redirected. So even though
10 there would be conversation, it was not up for a vote
11 who wanted to go do which activity.

12 Q Okay. Did you ever confer with Mr. Gilbert when you
13 were considering reclassifying the safety supervisor
14 job or eliminating it as the case may be, as to what
15 he did on a day-to-day basis?

16 A I don't think John and I sat down and went through any
17 specific classification question and answer of his
18 position.

19 Q Okay. Giving examples to the extent you possibly can,
20 can you tell me what you understood he did on a day-
21 to-day basis?

22 A Yeah. I think my understanding of his job duties was
23 to be a second tier supervisor in the department, help
24 us, you know, formulate a better department, and
25 provide, you know, direction and oversight and growth

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1 you used I think and then Colorado might send them
2 back and say, here's your level, is that.....

3 A That's correct. And based on the level,
4 interpreting [sic] that data, we would say, we need
5 to be in respirators or not, and provide that
6 direction back to the field and send them on their
7 way.

8 Q Okay. And when you get the -- is it correct that when
9 you get the test result from Colorado of parts per
10 million or whatever it is, there's some manual that
11 dictates whether or not if the test result is in a
12 certain range, you -- I don't know if you classify
13 them as level 1 remediation, 2, 3, but whether or not
14 it's respirators or suits or, you know, wash downs or
15 whatever the appropriate treatment is?

16 A Yeah, there's a lead standard from OSHA that we go by.

17 Q Okay. Okay. All right. So then the coor -- or the
18 supervisor might look in the manual and say, okay, we
19 have a level 19, therefore you need to use procedure 3
20 kind of thing?

21 A In context, that's correct. Yes.

22 Q Okay. All right. Okay. And might also a safety
23 specialist make those same kinds of -- or might not
24 also a safety specialist do that same work vis-a-vis
25 looking at the sample and deciding what type of

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1 remediation procedure was necessary?

2 A Not usually, because we tended to want to have
3 oversight of those kind of exposure levels from this
4 -- from the supervisory positions to ensure we were in
5 compliance.

6 Q Okay. Did specialists fill the supervisory role when
7 there was no safety supervisor on a hitch?

8 A If there was an absence from any position, the next
9 most qualified person was stepped up to that role as a
10 fill-in if we had available personnel. But when they
11 went to the new role, they assumed those duties and
12 responsibilities, and it was a temporary step up.

13 Q Okay. And when that happened, did they get a letter
14 saying you're -- for these two weeks, you're
15 temporarily supervisor or not?

16 A Email transmission to indicate to the staff who was in
17 what position so they would know whom to call.

18 Q Okay. Did anything go into their personnel folder in
19 that regard, if you know?

20 A No.

21 Q Did they get more money?

22 A Not if it was temporary assignment.

23 Q Okay. Okay. As far as -- and this dovetails nicely.
24 As far as your comments regarding Mr. Gilbert filling
25 in -- well, okay. Let's not go there yet. Did Mr.

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1 Gilbert ever have the authority to hire and fire
2 people?

3 A He never had to fire anyone, but I would say that not
4 -- not by himself as nor did I as the manager. It
5 would have taken consultation with HR and Gary
6 Buchanan as the business unit manager to actually
7 terminate employees.

8 Q Okay. So if there's a piece of paper terminating a
9 guy, would Gary Buchanan be the guy who signed it?

10 A He would -- yes, and the one termination I was
11 involved with early on in the -- my tenure there, it
12 required Gary's signature and HR approval to process
13 it.

14 Q Okay. And then is the converse true as to hiring,
15 that Gary would sign it, and HR would.....

16 A That's correct.

17 Qapprove it? Okay. All right. So position-wise
18 in the organizational chart, he's two steps away from
19 Gary?

20 A That's correct.

21 Q Okay. When he stepped up as you put it to the HSE
22 position -- that was your job, is that right?

23 A No. HSE manager.

24 Q HSE manager. He would get an email then saying you're
25 HSE manager for this time frame?

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1 It's a matter of notification.

2 Q And what kind of issues might you get a phone call
3 about when you were on R and R?

4 A Company policy required notification up the chain of
5 command for a lost time accident.

6 Q Okay.

7 A Significant spills.

8 Q Okay.

9 A That's always in our policy requirements is
10 notification on incidents.

11 Q What kind of decisions might Mr. Gilbert have made as
12 HSE acting manager that he wouldn't have called you
13 about, and he wouldn't have made as safety supervisor?

14 A More -- I think more of it's decisions that might have
15 been discussed or progressed and staff meetings that I
16 would normally been the primary attendee that in my
17 stead Ron or John would have attended. We had a
18 senior staff meeting that they would attend in my
19 absence, and there was always progress on action items
20 that would need to be relayed or discussed, or some
21 degree of decisionmaking took place in my absence that
22 normally I would have been the primary attendee to
23 those meetings and been involved with those decisions.
24 Q Okay. So they'd go to these meetings. They'd
25 disseminate that information, and it's a little

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